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Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By: *Conni Lane*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Scott Seamans

Application No.: 10/602,416

Filed: June 23, 2003

For: FOOTWEAR PIECES AND
METHODS FOR MANUFACTURING
SUCH

Confirmation No. 9598

Examiner: Jila M. Mohandesi

Technology Center/Art Unit: 3728

APPELLANT'S BRIEF

UNDER 37 CFR §41.37

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to the Notice of Appeal mailed on March 15, 2006 for the above-referenced application, Appellant submits this Brief on Appeal.

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1. REAL PARTY IN INTEREST

Crocs, Inc., a Colorado Corporation, (formerly Western Brands, LLC of Boulder, Colorado) is the real party in interest as the assignee of the above-identified application.

2. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known that will directly affect, are directly affected by, or have a bearing on the Board decision in this appeal.

3. STATUS OF CLAIMS

Claims 1, 9, 12-16, 18-27, and 40-42 are currently pending in the Application, but stand rejected by the Examiner. All pending claims stand rejected pursuant to the Office Action mailed January 9, 2006 ("Office Action"). The Pre-Appeal Group affirmed the Examiner's rejection in the Notice of Panel Decision from Pre-Appeal Brief Review mailed February 15, 2006 ("Panel Decision").

Claims 1, 9, 12-16, and 18-28 were originally filed in the Application on June 23, 2003. Claims 2-8, 10, 11, and 28-32 were cancelled, claims 33-39 were withdrawn, and claims 40-42 were added in the Preliminary Amendment filed on March 9, 2005. Claim 17 was cancelled in the Amendment filed on August 16, 2005. Claims 33-39 were cancelled in the Request for Continued Examination filed on December 21, 2005.

Claims 1, 9, 12-16, 18-27, and 40-42 are believed improperly rejected and are the subject of this appeal. A copy of the claims as rejected is attached as an Appendix.

4. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Office Action mailed January 9, 2006 and the Panel Decision mailed February 15, 2006.

5. SUMMARY OF CLAIMED SUBJECT MATTER

In the following summary, Appellant has provided exemplary references to sections of the specification and drawings supporting the subject matter defined in the claims as required by 37 C.F.R. §41.37(c)(1)(v). The specification and drawings also include additional

support for other exemplary embodiments encompassed by the claimed subject matter. Thus, it should be appreciated that the references are intended to be illustrative in nature only.

Embodiments of the invention relate to various footwear pieces, and in particular to footwear pieces including straps. (Application, p. 1, ll. 16, 17). Figure 1 of the Application shows an embodiment of such a piece of footwear **100**. Various embodiments of the present invention provide sectional shoe pieces that include a base section and a strap section. (*Id.*, p. 2, ll. 3, 4; Fig. 1; **110 120**). The base and strap section are formed from the same material. (*Id.*, p. 2, ll. 12, 13). In some embodiments, the material is a foam material that can be a lofted material. (*Id.*, p. 2, ll. 7-8).

The present invention address the problems associated with other types of footwear, specifically flip-flops and sandals. (*Id.*, p. 1, ll. 18-26). Wearers of the footwear embodied in the present invention can enjoy the ease of use offered by flip-flops with the comfort offered by sandals. (*Id.*, p. 1, ll. 22-24). Furthermore, the present invention provides better grip than sandals on, for example, wet floors. (*Id.*, p. 1, l. 25).

Claims 1 and 42 are the independent claims of the present invention. Claims 24 and 25 are dependent claims that are argued separately.

A. Independent Claim 1

Independent claim 1 recites a sectional footwear piece comprising a base section and a strap section. (*Id.*, p. 5, ll. 27, 28; Fig. 1, **100, 110, 120**). The base section includes an upper and a sole having an outer portion of a rear sole perimeter. (*Id.*, p. 5, l. 28; p. 7, l. 5; Fig. 1, **150, 160, 162**) The base section is formed as a first part molded from a first piece of lofted foam material. (*Id.*, p. 5, ll. 28, 29; p.9, ll. 27, 28; Fig. 1, **110**).

The strap section comprises an inner portion. (*Id.*, p. 7, l. 10; Fig. 1, **120, 121**). The strap section is formed as a second part molded from a second continuous piece of said lofted foam material. (*Id.*, p. 2, ll. 5-8; Fig. 1, **120**). The strap section is attached to the base section such that the strap contacts the base section and pivots relative to the base section. (*Id.*, p. 2, ll. 18-20; p. 7, ll. 11-13). For example, in one embodiment the connection comprises a rivet. (*Id.* Fig. 1, **130, 131a**). A frictional force between the strap section and the base section at the contact between the inner portion of the strap section and the outer portion of the rear sole

perimeter maintains the strap section fixed relative to the base section. (*Id.*, p. 7, ll. 20-24; Fig. 1, 120, 121, 160).

It should be noted that support for claim 1 also lies in other portions of the written description and in other figures. For clarity, the Applicant only cites the above portions of the specification and figures.

B. Independent Claim 42

Independent claim 42 recites a sectional footwear piece comprising a base section and a strap section. (*Id.*, p. 5, ll. 27, 28; Fig. 1, 100, 110, 120). The base section includes an upper and a sole having an outer portion of a rear sole perimeter. (*Id.*, p. 5, l. 28; p. 7, l. 5; Fig. 1, 150, 160, 162). The base section further includes an upper opening perimeter. (*Id.* p. 6, l. 30; Fig. 1, 170). The base section is formed as a first part molded from a first continuous piece of lofted foam material. (*Id.*, p. 5, ll. 28, 29; p. 9, ll. 27, 28; Fig. 1, 110).

The strap section has an inner portion. (*Id.*, p. 7, l. 10; Fig. 1, 120, 121). The strap section is formed as a second part molded from a second continuous piece of the lofted foam material. (*Id.*, p. 2, ll. 5-8; Fig. 1, 120). The strap section is attached to the base section such that the strap contacts the base section and pivots relative to the base section. (*Id.*, p. 2, ll. 18-20; p. 7, ll. 11-13). A frictional force between the strap section and the base section at the contact between the inner portion of the strap section and the outer portion of the rear sole perimeter maintains the strap section fixed relative to the base section. (*Id.*, p. 7, ll. 20-24; Fig. 1, 120, 121, 160).

A first rivet is placed at the first attachment point. (*Id.*, Fig. 1, 130a, 131a) A second rivet is placed at a second attachment point. (*Id.*, Fig. 2, 130b, 131b). For example, in some embodiments one end of the strap section is riveted to one side of the base section, while the other end of the strap is riveted to the other side of the base section. (*Id.*, p. 2, ll. 20-22). The distance from the first attachment point to the second attachment point along the upper opening perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section. (*Id.*, p. 3, ll. 6-8; Fig. 3; Fig. 4). Furthermore, the distance from the first attachment point to the second attachment point along the rear sole

perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section. (*Id.*, p. 2, ll. 31-33; Fig. 3; Fig. 5).

It should be noted that support for claim 42 also lies in other portions of the written description and in other figures. For clarity, the Applicant only cites the above portions of the specification and figures.

C. Dependent Claim 24

Dependent claim 24 depends from independent claim 1. Claim 24 further recites the sole comprises a support base. (*Id.*, p. 7, l. 6; Fig. 1, **162, 165**). The support base includes a raised pattern extending throughout the surface where a foot contacts the support base. (*Id.*, p. 4, ll. 4, 5; Fig. 1, **165**; Fig. 2, **165**, Fig. 3, **165**).

D. Dependent Claim 25

Dependent claim 25 depends from independent claim 1. Claim 25 further recites the sole comprises a bottom surface and a support base. (*Id.*, p. 7, l. 6; p. 8, l. 12; Fig. 1, **162, 165**; Fig. 6). The support base includes a raised pattern extending throughout the surface where a foot contacts the support base and further comprising a tread on the sole. (*Id.*, p. 8, ll. 13-16; Fig. 1, **165**; Fig. 2, **165**; Fig. 3, **165**; Fig. 6, **192, 193, 194, 196, 197, 199**).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 9, 12-16, 18-23, 26-27, and 40-42

Claims 1, 9, 12-16, 18-27 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the cited portions of U.S. Patent No. 6,237,249 to Aguerre, et al. (hereinafter "Aguerre") in view of U.S. Patent No. 4,476,600 to Seidel, et al. (hereinafter "Seidel"), the alleged admitted prior art page 11 of the instant specification and U.S. Patent No. 2,897,566 to Albiniano (hereinafter "Albiniano").

B. Claims 24 and 25

Claims 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aguerre, Seidel, Admitted Prior Art, Albiniano the cited portions of U.S. Patent No. Des 416,667 to Lamstein, et al. (hereinafter "Lamstein").

7. ARGUMENT

A. Claims 1, 9, 12-16, 18-23, 26-27, and 40-42

Independent claims 1 and 42 relate to a footwear piece comprising a base section and a strap section, both respectively formed as a part molded from lofted foam material. The strap section is attached to the base section such that the strap pivots relative to the base section with a frictional force at the contact between the inner portion of the strap section and the outer portion of the rear sole perimeter to thereby maintain the strap section fixed relative to the base section.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See* M.P.E.P. §§ 2142 and 2143, Original Eighth Edition, August 2001, Latest Revision October 2005. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See* M.P.E.P. §2143.01; *In re Roffet*, 149 F.3d 1350, 1357 (Fed. Cir. 2004) (holding without a motivation to combine, a rejection based on a *prima facie* case of obviousness is improper). The teaching or suggestion to make the claimed combination must be found in the prior art, and not be based on Applicant's disclosure. *See* M.P.E.P. §§2143.01 and 2143.03.

The present rejection fails to present a *prima facie* case of obviousness for at least two reasons. First, as mentioned above, the present claims require that the strap section is formed as a second continuous piece of a lofted foam material. None of the cited art teaches this limitation. More specifically, Seidel fails to teach any strap and neither Aguerre nor Albiniano teach or suggest a strap that is made out of such a material. Further, counsel forcefully disagrees that the present application admits that making such a strap of a lofted foam material is prior art. Although the application does describe an existing type of lofted foam material that is useful in

connection with the present invention, the specification never admits that this material was known in making a heel strap as claimed.

It appears that the only assertion in the Office Action that the prior art teaches the limitation of a strap section that is constructed of a lofted foam material is the following statement: "In this case, to make the upper and sole of Aguerre '249 from a piece of expanded foam material and the strap from expanded foam material as taught by Seidel '600 for easier and cheaper manufacturing of the footwear." (Office Action, p. 7, line 22 though page 8, line 3). Applicant fails to understand how the above statement provides motivation for anyone skilled in the art in possession of the cited prior art to make the strap section of a lofted foam material as set forth in the claims. As cited above, none of the cited art teaches a heel strap constructed of a foam material, and the mere fact that moldable foam material exists does not provide any motivation for using such a material in a heel strap, especially in light of Seidel which does not even have a heel strap. Moreover, the examiner has provided no evidence (in support of a motivation to combine) that making a heel strap of such a material would be "easier and cheaper." For instance, this assertion provides no relative comparison of how it would be "easier and cheaper", i.e., easier and cheaper relative to what other process? Even if another process were set forth in the Office Action, there are no facts supporting how making a heel strap of a lofted foam material would be "easier and cheaper", if that could even be considered as a motivation at all.

Because the cited art fails to teach or suggest an important limitation of the rejected claims, claims 1, 9, 12-16, 18-27 and 40-42 are distinguishable for at least this reason.

Secondly, the claims of the present invention also require a frictional force at the contact between the inner portion of the strap section and the outer portion of the rear sole perimeter which maintains the strap section fixed relative to the base section. The amount of friction generated is dictated in part because the two materials which contact each other (from the shoe body and the strap) are both constructed of a lofted foam. This allows the strap to remain in a secure location while also being relatively easy to pivot when desired.

Contrary to the present claims, Aguerre discloses a "slide-type sandal, having an elastic and flexible rear heel strap 102." Aguerre, Col. 4, lines 28-29. The rear heel strap

disclosed by Aguerre is further described as being capable of being “freely rotated” between a first and second position. *See, e.g., id.*, Col. 7, lines 49-53; Col. 9, lines 29-34, and Col. 10, lines 48-50. In fact, in several embodiments, additional washers are added to ensure free rotation about the rotation point. As explained in Aguerre, “during rotation of the rear heel strap 202 about the rivet 244, it is common for the friction between the heel strap 202, the vamp 204 and the rivet 244 to interfere with smooth rotation. In order to facilitate smoother rotation of the rear heel strap 202 about the rivet 244, one of a first pair of nylon washer separators 246 is placed on the inside of the rear heel strap 202 and one of a second pair of nylon washer separators 248 is placed on the outside of the rear heel strap 202 as shown in FIG. 12.” *Id.*, Col 9, lines 20-29.

As such, it is submitted that Aguerre fails to teach a molded, lofted foam heel strap configured such that a frictional force at the contact between the inner portion of the strap section and the outer portion of the rear sole perimeter maintains the strap section fixed relative to the base section.

While the Office Action attempts to cure this remedy by citing the Albiniano patent, it is well established law that the teachings of one reference may not be combined with the teaching of a second reference when there is a specific teaching away. *See* M.P.E.P. § 2143.01; M.P.E.P. 2144.05; *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1322 (Fed. Cir. 2004) (holding presumption of obvious can be overcome if shown “[t]hat the prior art taught away from the claimed invention). As previously described, Aguerre specifically teaches the benefits of being freely rotated and uses washers to accomplish this. Hence, one of skill in the art would have no motivation to substitute it washers for the connectors described in Albiniano. Rather, such a combination is clearly hindsight reconstruction of the cited art, which is clearly impermissible.

Because the heel strap of Aguerre is designed to freely rotate about its connection point, and to specifically minimize friction to ensure free rotation through use of, *e.g.*, washer separators, it may not be properly combined with Albiniano.

In addition, with reference to Claim 42 and certain of the dependent claims, Aguerre fails to specifically disclose that the distance from the first attachment point to the second attachment point along the upper opening perimeter is approximately the same distance

from the first attachment point to the second attachment point along the strap section, or that the distance from the first attachment point to the second attachment point along the rear sole perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section. Further, Aguerre fails to specifically disclose that the strap section can pivot relative to the base section such that an inner portion of the strap section contacts an outer portion of the rear sole perimeter.

Hence, for this additional reason, a *prima facie* case of obviousness has not been established. Therefore, the Applicant traverses the rejection of claims 1, 9, 12-16, 18-27, and 40-42, and respectfully request withdrawal of this rejection.

B. Claims 24 and 25

Dependent claims 24 and 25 depend from claim 1 and relate to a footwear piece comprising a base section and a strap section, both respectively formed as a part molded from lofted foam material. The base section of the footwear piece comprises an upper and a sole. The sole further comprises a support base, wherein the support base includes a raised pattern extending throughout the surface where a foot contacts the support base.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See* M.P.E.P. §§ 2142 and 2143. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See* M.P.E.P. §2143.01; *In re Roffet*, 149 F.3d at 1357 (holding without a motivation to combine, a rejection based on a *prima facie* case of obviousness is improper). The teaching or suggestion to make the claimed combination must be found in the prior art, and not be based on Applicant's disclosure. *See* M.P.E.P. §§2143.01 and 2143.03. Furthermore, the teachings of one reference may not be combined with the teaching of a second reference when there is a specific teaching away. *See* M.P.E.P. § 2143.01; M.P.E.P. 2144.05; *Iron Grip Barbell Co.*, 392 F.3d at 1322.

The present rejection fails to present a *prima facie* case of obviousness because the prior art teaches away from the pending claims. As mentioned above, the present claims

require a "raised pattern extending throughout the surface where a foot contacts the support base." None of the cited art teaches this limitation. More specifically, Lamstein fails to teach or suggest this limitation and instead teaches away from it. Lamstein teaches a method in which a raised pattern does not extend throughout the surface of a support base. *See* Fig. 2. In fact, the support base does not have a raised pattern in the sections where a human foot would come into the greatest amount of contact with it. *See id.*

Hence, for this reason, a prima facie case of obviousness has not been established. Therefore, the Applicant traverses the rejection of claims 24 and 25, and respectfully request withdrawal of this rejection.

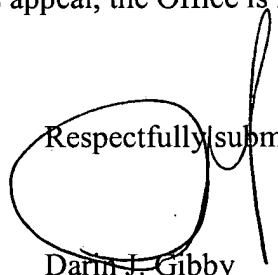
8. CONCLUSION

For these reasons, it is respectfully submitted that the rejection should be reversed.

Please deduct the requisite fee of \$500.00 pursuant to 37 C.F.R. §41.20(b)(2) from debit deposit account 20-1430 and any additional fees that may be due in association with the filing of this Appeal Brief.

If for any reason the Office believes a telephone conference would in any way expedite the resolution of the issues raised in this appeal, the Office is invited to telephone the undersigned attorney at (303) 571-4000.

Respectfully submitted,


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60719724 v1

9. CLAIMS APPENDIX

The claims pending in the application are as follows:

1. (Previously presented) A sectional footwear piece comprising:
a base section, wherein the base section includes an upper and a sole having an outer portion of a rear sole perimeter, formed as a first part molded from a first continuous piece of lofted foam material; and
a strap section having an inner portion, wherein the strap section is formed as a second part molded from a second continuous piece of said lofted foam material, and wherein the strap section is attached to the base section such that the strap contacts the base section and pivots relative to the base section; and wherein a frictional force between the strap section and the base section at the contact between the inner portion of the strap section and the outer portion of the rear sole perimeter maintains the strap section fixed relative to the base section.

Claims 2-8 (Canceled).

9. (Previously Presented) The sectional footwear piece of claim 1, wherein the strap section is attached to the base section by a first and a second rivet made of plastic that is denser than the lofted foam material, wherein the first rivet fastens a first end of the strap section to a first side of the base section, and wherein the second rivet fastens a second end of the strap section to a second side of the base section.

Claims 10-11 (Canceled).

12. (Original) The sectional footwear piece of claim 9, wherein the first rivet is placed at a first attachment point, wherein the second rivet is placed at a second attachment point, wherein the base section includes a rear sole perimeter, and wherein the distance from the first attachment point to the second attachment point along the rear sole perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section.

13. (Original) The sectional footwear piece of claim 12, wherein the strap section can pivot relative to the base section such that an inner portion of the strap section contacts an outer portion of the rear sole perimeter.

14. (Previously presented) The sectional footwear piece of claim 1, wherein the lofted foam material comprises a resin mixture that exhibits an expansion coefficient and a contraction coefficient, the final growth value of which resin mixture is between 1.46 and 1.58, inclusively.

15. (Original) The sectional footwear piece of claim 9, wherein the first rivet is placed at a first attachment point, wherein the second rivet is placed at a second attachment point, wherein the base section includes a upper opening perimeter, and wherein the distance from the first attachment point to the second attachment point along the upper opening perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section.

16. (Original) The sectional footwear piece of claim 15, wherein the strap section can pivot relative to the base section such that an inner portion of the strap section contacts an outer portion of the upper opening perimeter.

17. (Canceled).

18. (Original) The sectional footwear piece of claim 9, wherein the first rivet is placed at a first attachment point, wherein the second rivet is placed at a second attachment point, wherein the base section includes a upper opening perimeter, wherein the base section includes a rear sole perimeter, wherein the distance from the first attachment point to the second attachment point along the upper opening perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section; and wherein the distance from the first attachment point to the second attachment point along the rear sole perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section.

19. (Original) The sectional footwear piece of claim 1, wherein a plurality of ventilators are formed in the upper.

20. (Previously Presented) The sectional footwear piece of claim 19, wherein the upper comprises a substantially horizontal portion and a substantially vertical portion, wherein at least one of the plurality of ventilators is formed in the substantially vertical portion extending up a majority of the height of the vertical portion, and wherein at least one of the plurality of ventilators is formed in the substantially horizontal portion.

21. (Original) The sectional footwear piece of claim 19, wherein the upper includes a substantially vertical region, wherein the substantially vertical region includes a toe region and opposing side regions, wherein the toe region is a solid portion, and wherein at least some of the plurality of ventilators are formed in the side regions.

22. (Original) The sectional footwear piece of claim 1, wherein a toe region of the upper is extended at a location corresponding to the larger toes of the human foot, and wherein the toe region of the upper generally follows the contour of a human foot

23. (Original) The sectional footwear piece of claim 1, wherein the sole comprises a rear sole perimeter and a support base, and wherein the rear sole perimeter is raised above the support base.

24. (Previously Presented) The sectional footwear piece of claim 1, wherein the sole comprises a support base, and wherein the support base includes a raised pattern extending throughout the surface where a foot contacts the support base.

25. (Previously Presented) The sectional footwear piece of claim 1, wherein the sole comprises a bottom surface and a support base, and wherein the support base includes a raised pattern extending throughout the surface where a foot contacts the support base and further comprising a tread on the sole.

26. (Original) The sectional footwear piece of claim 1, wherein the strap section is attached to the base section through use of a punched hole.

27. (Original) The sectional footwear piece of claim 26, wherein a plurality of ventilators in the form of holes are formed in the upper as part of manufacturing the base section.

Claims 28-39 (Canceled).

40. (Previously presented) The sectional footwear piece of claim 14, wherein the resin mixture comprises a resin, a growth additive and a color pigment.

41. (Previously Presented) The sectional footwear piece of claim 40, wherein the final growth value of the resin mixture is adjusted depending on the color pigment in the resin mixture thereby maintaining a relatively consistent footwear piece size regardless of color.

42. (Previously presented) A sectional footwear piece, the sectional footwear piece comprising:

a base section, wherein the base section includes an upper and a sole having an outer portion of a rear sole perimeter, formed as a first part molded from a first continuous piece of lofted foam material;

a strap section having an inner portion, wherein the strap section is formed as a second part molded from a second continuous piece of said lofted foam material, and wherein the strap section is attached to the base section such that the strap contacts and pivots relative to the base section;

wherein the strap section is attached to the base section by a first and a second rivet made of plastic that is denser than the lofted foam material, wherein the first rivet fastens a first end of a strap as section to a first side of the base section, and wherein the second rivet fastens to a second end of the strap section to a second side of the base section;

wherein a frictional force between the strap section and the base section at the contact between the inner portion of the strap section and the outer portion of the rear sole perimeter maintains the strap section fixed relative to the base section; and

wherein the first rivet is placed at a first attachment point, wherein the second rivet is placed at a second attachment point, wherein the base section includes a upper opening perimeter, wherein the base section includes a rear sole perimeter, wherein the distance from the first attachment point to the second attachment point along the upper opening perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section; and wherein the distance from the first attachment point to the second attachment point along the rear sole perimeter is approximately the same distance from the first attachment point to the second attachment point along the strap section.

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Page 16

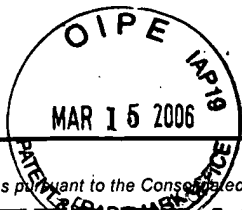
PATENT
Attorney Docket No. 040130-050010US

10. EVIDENCE APPENDIX

Not included.

11. RELATED PROCEEDINGS APPENDIX

Not included.



3-17-06

PTO/SB/17 (01-06)

AF
S
Ifw

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2006☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$ 500)**Complete if Known**

Application Number	10/602,416
Filing Date	June 23, 2003
First Named Inventor	Seamans, Scott
Examiner Name	Jila M. Mohandes
Art Unit	3728
Attorney Docket No.	040130-050010US

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 20-1430 Deposit Account Name: Townsend and Townsend and Crew LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Small Entity		Small Entity		Small Entity		
	Fee (\$)	Fee (\$)	Fee (\$)	Fee (\$)	Fee (\$)	Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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-20 or HP = _____ x _____ = _____

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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-3 or HP = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3

Small Entity	
Fee (\$)	Fee (\$)
50	25
200	100
360	180
Multiple Dependent Claims	
Fee (\$)	Fee Paid (\$)

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

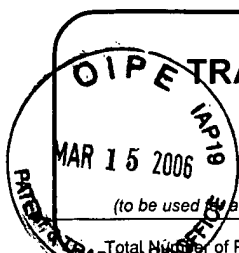
Other (e.g., late filing surcharge): Filing a brief in support of an appeal**Fees Paid (\$)**500**SUBMITTED BY**

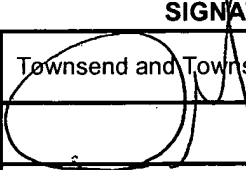
Signature

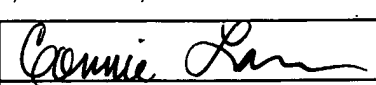
Registration No. 38,464
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Name (Print/Type) Darin J. GibbyDate March 15, 2006

	Application Number	10/602,416
	Filing Date	June 23, 2003
	First Named Inventor	Seamans, Scott
	Art Unit	3728
	Examiner Name	Jila M. Mohandesi
	Attorney Docket Number	040130-050010US
Total Number of Pages in This Submission		

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard Appellant's Brief
<input type="checkbox"/> Remarks: The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Townsend and Townsend and Crew LLP	
Signature		
Printed name	Darin J. Gibby	
Date	March 15, 2006	Reg. No. 38,464

CERTIFICATE OF TRANSMISSION/MAILING			
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I hereby certify that this correspondence is being deposited with the United States Postal Service with "Express Mail Post Office to Address" service under 37 CFR 1.10 on this date March 15, 2006 and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name	Connie Larson	Date	March 15, 2006